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FEDERAL COMMUNICATIONS COMMISSION
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Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

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| In the Matter of | ) | |
| | ) | |
| Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation | ) | MM Docket 93-215 |
| | ) | |
| and | ) | |
| | ) | |
| Adoption of a Uniform Accounting System for Provision of Regulated Cable Service | ) | CS Docket 94-28 |

**REPLY COMMENTS OF COMCAST CABLE COMMUNICATIONS, INC.**


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## SUMMARY

If the cost of service rules are to be a meaningful "backstop" to benchmark regulation, they must give cable operators a fair opportunity to recover all costs and a fair return. To reach this goal, the Commission must modify the interim rules to increase the permitted return on capital and to include more intangible assets in the ratebase. The Commission also must not adopt a productivity offset, a uniform system of accounts or more restrictive telephone-style affiliate transaction rules.

First, the Commission should increase the permitted rate of return. All of the evidence shows that cable operators require a return higher than 11.25 percent, especially because cable companies are considerably riskier than telephone companies. Telephone company claims to the contrary are not supported by any relevant evidence.

Second, the Commission should permit cable operators to routinely include their intangible assets in their ratebases. Most cable systems have significant intangible assets. Denying recovery unfairly and unconstitutionally penalizes those systems for decisions made in good faith before the adoption of the 1992 Cable Act. The consumer benefits associated with intangible assets also support their inclusion in the ratebase.

Third, there is no data supporting a productivity offset. The new obligations in the 1992 Cable Act greatly reduce the chances for meaningful productivity gains in the near future. An offset also would impede expansion and improvement of cable service.

Next, the Commission should not adopt a uniform system of accounts for cable operators. Uniform accounting would bring the most intrusive aspects of telephone

regulation to cable, and most cable operators would be forced to modify their accounting systems. There are no benefits to requiring uniform accounting, especially in light of the standardized showings already required in the Commission's rate regulation forms.

Finally, the Commission should not apply telephone-style affiliate transaction rules to the cable industry. The kinds of abuses that made the telephone rules necessary have not occurred in the cable industry and the structure of cable operator-programmer relationships makes such abuses unlikely. The new programming access and uniform pricing rules already serve to protect against abuse.

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**REPLY COMMENTS OF COMCAST CABLE COMMUNICATIONS, INC.**

Comcast Cable Communications, Inc. ("Comcast"), by its attorneys, hereby submits its reply comments in response to the Commission's *Further Notice of Proposed Rulemaking* in the above-referenced matter.[1] Comcast submits that the record in this proceeding shows that the Commission should make significant modifications to its interim cost of service rules to account for the actual costs of capital faced by cable companies and the significant intangible investments made by cable operators. The Commission also should not adopt the productivity offset, uniform system of accounts and cost allocation rules proposed in the *Further Notice*.

1/ Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 — Rate Regulation, *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket 93-215, FCC 94-39 (rel. Mar. 30, 1994) (the "*Further Notice*").

## I. Introduction

The Commission has characterized the cost of service rules as a "backstop" to benchmark regulation, but the cost of service rules must give cable operators a fair opportunity to recover their investment and a fair return if they are to serve effectively in that role. The interim rules do not do so. Moreover, the proposals in the *Further Notice* would further inhibit cable operators' efforts to obtain a fair return on their investments. Thus, Comcast urges the Commission to modify the interim rules and not to adopt certain of the proposed rules.

First, the Commission should substantially increase the permitted return to be used in cost of service showings. Commenters have shown, through a variety of methods, that the risks of the cable business require a return well in excess of the 11.25 percent now authorized and, in any event, require a return that is higher than that afforded telephone companies.

Second, the Commission should address the second half of the return equation, that is the base on which the return is earned. The interim rules unreasonably presume against inclusion of intangible assets in cable ratebase and fail to recognize the consumer benefits that resulted from the transactions that created those assets. Failure to provide for routine inclusion of these assets in ratebase assures that cable operators with intangible assets acquired prior to the onset of rate regulation will be unfairly, indeed unconstitutionally, penalized.

At the same time, the Commission should not adopt proposed rules that would unreasonably burden cable operators. In particular, there is no justification for adopting the proposed productivity offset. There is no relevant record evidence that supports a productivity offset. Instead, the imposition of new, costly requirements in the 1992 Cable Act makes it unlikely that cable operators will significantly increase their productivity in the near future. A productivity offset also would undermine efforts to expand and improve cable service.

Adoption of a uniform system of accounts would burden cable operators without providing any tangible benefit to consumers or regulators. A uniform system of accounts is common carrier regulation in its most intrusive form and would provide no meaningful benefits to regulators or consumers. The best argument that proponents can muster for adoption of a uniform system of accounts is that telephone companies already have their own uniform accounts, a claim that hardly justifies imposing the burden on cable operators that are much smaller on average and much less homogenous by nature than telephone companies.

Finally, there also is no purpose served by imposition of telephone-style affiliate transaction rules for cable operators. In particular, cable-affiliated programmers do not have the same incentives that create dangers in the telephone industry context. At the same time, the existence of a significant independent market for cable programming makes it possible to monitor affiliated programming transactions for abuse.

## II. Modification of the Authorized Return and the Treatment of Intangible Assets Is Necessary to Permit Cable Operators to Obtain Constitutionally Acceptable Returns on Their Actual Investments.

The Commission's first priority should be to address the specific deficiencies of the interim rules. In particular, the Commission must correct the unduly low authorized return on cable investments and its unreasonable treatment of intangible assets acquired by cable operators prior to the onset of rate regulation. These concerns are interdependent, because cable operators will be unable to earn a reasonable return on their actual investments unless both problems are corrected. The Commission cannot satisfy Constitutional requirements for a fair return on the actual investment of cable operators unless it addresses both the return and ratebase deficiencies.

### A. The Evidence Overwhelmingly Demonstrates that the Return Authorized in the Interim Rules Is Far Too Low.

As described in Comcast's comments, an adequate return on investment is necessary to attract the capital that cable operators must have to maintain and expand the services they offer consumers and to pay for innovative new services in the future. Comments of Comcast at 10. The comments provided overwhelming evidence that the return selected by the Commission in its interim rules is inadequate. These comments show that almost any approach the Commission could use to determine the rate of return for cable operators would result in a higher rate than the one chosen in the *Further Notice*.

For instance, Continental provided a study using the CAPM model that showed that the return should be at least 13 percent. Comments of Continental at 49-52,

Exhibit G. Similarly, the NCTA provided evidence that the return should be increased by at least 250 basis points. Comments of NCTA at 42. Comcast showed that the yield curve for cable and telephone bonds differed by a wide margin over the entire range of maturity.[2] Other commenters provided empirical evidence of the actual cost of capital for cable operators as well. *See* Comments of Tele-Media at 2-4.

This evidence that returns should be higher also is supported by logic. Comcast described the significant risks facing the cable industry, and how those risks differed from those facing the telephone industry. Those risks include lower market share, higher levels of competition from close substitutes and greater sensitivity to changes in economic activity. Comments of Comcast at 4-8. Other parties noted that even the largest cable operators are much smaller than the Bell companies or GTE. This enormous disparity in size gives telephone companies significant advantages in obtaining low cost capital. Telephone companies also can lock in long-term debt, an opportunity that is available to only a handful of cable companies.[3]

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2/ Comments of Comcast at Exhibit 2. Comcast's filing compared the yield curves for Time Warner bonds and bonds of NYNEX's operating companies. This comparison is particularly instructive because Time Warner is considered a relatively safe cable company, in large part because of its diversification into other businesses, and NYNEX is considered among the riskier telephone companies. In other words, the comparison of Time Warner's yield curve to NYNEX's yield curve almost certainly understates the differences between yields required by investors from average cable companies and average telephone companies.

3/ Continental also notes that the Commission has a constitutional obligation to adopt a rate of return as close to the top of the zone of reasonableness as possible in order to avoid burdening cable operators' First Amendment rights. Continental Comments at 71-73, *citing Bell Atlantic v. FCC,* Case No. 92-1619 (D.C. Cir. June 10, 1994). The Commission's (continued...)

It is significant that it is not only cable operators that support an increased return, but programming interests as well. *See* Comments of Discovery at 7. Programmers recognize the necessity of adequate returns to give cable operators the ability and incentive to provide high quality, innovative service to their customers, and the Commission should heed that advice.

Bell Atlantic and GTE dissent to the clear record supporting an increased rate of return. Bell Atlantic, in particular, argues that telephone companies are as risky as cable companies, citing its belief that it is beset by competitors on all sides, while cable operators are protected from competition from telephone companies and others.4/ This is a fantasy. The cable industry has been subject to competition from rival technologies for years and never has achieved penetration within even 25 percent of the telephone industry. Comments of Comcast at 4. While Bell Atlantic complains of delays in approval of telephone company

3/ (...continued)
analysis in the *Further Notice* revealed that 11.25 percent was not at the top of the zone of reasonableness, so the Commission is obliged to increase the rate of return. *Further Notice,* Attachment D at 8.

4/ This argument is part of Bell Atlantic's continuing "regulatory parity" campaign. As in its previous filings, Bell Atlantic ignores the significant differences in the cable and telephone industries, starting with the difference between acting solely as the transport for other people's communications and choosing, promoting and having to pay for programming and other content that is delivered to the consumer. As Comcast and others have documented at length there also are significant differences in the statutory provisions governing cable and telephone that make it inappropriate, and likely impossible, for the Commission to adopt mirror image regulatory schemes for the two industries. *See, e.g.,* Reply of Comcast Cable Communications, Inc., MM Docket 93-215, filed June 27, 1994, at 8-9. Bell Atlantic's myopic focus on regulatory parity so colors its comments that they have little or no probative value in this proceeding.

video dialtone applications, its applications in New Jersey have now been approved. *See New Jersey Bell Telephone Company,* Order and Authorization, File No. W-P-C 6840, FLC 94-180 (rel. July 18, 1994). Meanwhile, telephone companies have almost no competition. As the *New York Times* reported on July 25, only four states permit anything approaching full competition, and the total revenues of local exchange company competitors last year were $251 million, just over one day's revenue for local exchange carriers.[5] GTE, meanwhile, focuses its argument on appropriate returns for telephone companies, a matter not at issue in this proceeding. Comments of GTE at 6-10. Neither Bell Atlantic nor GTE provides any basis to dispute the conclusion that the return adopted under the interim rules is far too low.

### B. The Commission Must Provide for Return on and Recovery of Intangible Assets Acquired Prior to the Onset of Rate Regulation.

If much or most of a cable operator's investment is arbitrarily excluded from the base on which a return may be earned, then it may be impossible to set a return on the remaining ratebase high enough to compensate investors fairly for their actual investments. As the comments demonstrate, this is not an academic issue. Many cable operators, especially those who acquired their systems after the 1984 Cable Act, have significant intangible assets. Comments of Continental at 26 n.44. Recovery of and return on those

5/ Andrews, E.L., "Bell Companies Use Regulation To Stop Rivals," *N.Y. Times,* July 24, 1994, Sec. 1, pp. 1, 26.

assets is necessary for cable operators to repay the debt used to purchase those systems and to provide an adequate return on equity investments.

Nevertheless, the interim rules presumptively disallow most intangible assets from either recovery or a return.[6] The net effect of this disallowance is to make it impossible for cable operators to recover their actual costs of remaining in business through a cost of service showing. Meanwhile, the Commission's new benchmark rules also result in significant reductions in permissible rates that are likely to reduce significantly cash flow needed to repay debt. Thus, cable operators with significant debt obligations find themselves without any recourse under the Commission's rules. These cable operators constitute a significant part of the entire industry, including many industry leaders and mid-sized cable companies. If they are unable to recover and earn a return on their intangible assets, certain of the smaller and weaker systems may be forced out of business.

The solution to this dilemma is to permit cable operators to include intangible assets in ratebase in cost of service showings if those assets were acquired in arms' length transactions prior to the adoption of the 1992 Cable Act. Only if cable operators are permitted to obtain a return on and recovery of their intangible assets will they able to remain financially healthy. The Commission has been presented with many approaches to inclusion of intangible assets, from such parties as the NCTA, Continental and TCI, but the

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6/ In practice, this presumptive disallowance is the equivalent of actual disallowance. The Commission has implied that it will not allow intangible assets if doing so will result in rates above "competitive," *i.e.*, benchmark rates, but the whole reason for cost of service showings is that benchmark rates are not sufficient. *Further Notice* at ¶ 99.

key element of each is that recognition of intangible assets is necessary if cost of service showings are to provide a meaningful safety net for most cable operators. *See* Comments of NCTA at 32; Comments of Continental at 6; Comments of TCI at 32.

The interim rules also fail to recognize the consumer benefits associated with intangible assets. Consumers have obtained concrete benefits in the form of lower prices for programming, economies of scale in acquisition of supplies and capital goods, consolidated management and system upgrades that result from acquisitions. Comments of TCI at 26. In many cases, consumer benefits are directly traceable to acquisitions because franchising authorities demanded specific actions before they would permit an acquisition. For instance, Connecticut approved the acquisition of the Storer Cable systems in that state only after the purchasers agreed to upgrade all of the systems, provide additional support for PEG channels and freeze rates, among other direct benefits to Connecticut consumers. There can be little question that these benefits were inextricably tied to the acquisition of the Storer systems and the intangible assets that were created by that acquisition.

Inclusion of intangible assets in the ratebase for cost of service showings also is necessary to reach a Constitutionally-permissible result. As Comcast noted in its comments and its petition for reconsideration of the interim rules, it is not enough for the Commission to find that a particular rate of return is sufficient unless that return is applied to the proper ratebase. The Constitutional test, after all, is whether investors can obtain a sufficient return on their investment, not whether the permitted return would be sufficient if it were applied to all of the investment. Comments of Comcast at 12 n.14. Disallowance of intangible assets would mean that it effectively would be impossible to set a return high enough to compensate investors in systems with significant intangibles.[7]

As noted above, the solution to this problem is to permit cable operators to include intangible assets in the ratebase in their cost of service showings. Recognition of intangible assets acquired prior to the onset of regulation will avoid the constitutional infirmities described by Comcast and others and eliminate the danger that prudent acquisitions during the 1980s will become nearly valueless assets in the mid-1990s.

## III. The Commission Should Not Adopt New Rate Regulation Rules that Impose Unnecessary Burdens on Cable Operators.

Reforming the flaws in the interim rules is important, but the Commission also should avoid adopting new rules that will unduly burden cable operators in the future. For that reason, the Commission should not adopt the proposed productivity offset, should not require cable operators to use a uniform system of accounts and should not apply telephone-style affiliate transaction rules to cable service.

7/ For instance, a system with 25 percent of its capital asset value in disallowed assets, and a 50:50 debt/equity ratio and a 9 percent cost of debt would require a 19.5 percent after-tax return to pay the interest on its debt and obtain an 11.25 percent return on its equity. This calculation does not account for the additional funds necessary to retire the debt on the disallowed portion of the assets, which would increase the required return to a considerably higher level. Many systems have intangible assets that account for considerably more than 25 percent of their total capital assets.

## A. There Is No Justification for Adoption of a Productivity Offset for Going-Forward Rates.

The comments show that there is simply no basis for adopting a productivity offset for going-forward cable rates. This conclusion is supported by both empirical data and sound policy judgment.

First, there is no empirical data to support a productivity offset for cable. As Comcast and others showed in their comments, there never was any data to support the suggestion of a two percent productivity offset. Comments of Comcast at 16-17; Comments of Continental at 53. At the same time, two studies provided by NCTA show that there is no basis for any productivity offset for cable. Comments of NCTA at Attachments A and B. As TCI points out, no party has presented any substantive evidence of productivity gains at any point in this proceeding.[8] Considering, as documented in Comcast's comments, the difficulty the Commission encountered in setting a productivity adjustment for the telephone industry, which literally had decades of productivity studies available, it is obvious that the Commission lacks the data necessary to adopt a productivity adjustment for cable operators. *See* Comments of Comcast at 14; Comments of Time Warner at 33.

8/ Comments of TCI at 51. Bell Atlantic argues that there is evidence for a 1.7 percent productivity differential, but as usual does not differentiate between the telecommunications business, where this number was derived, and the cable business. Comments of Bell Atlantic at 5 n.16. Considering the significant differences between the inputs used by cable operators and telephone companies, such as cable operators' need for programming, it is impossible to credit Bell Atlantic's assertion that a telecommunications productivity study has anything to say about cable's productivity.

Second, even if there were useful historical productivity data for cable operators, that data would have no value in predicting future productivity because of the significant changes imposed on the cable industry by the 1992 Cable Act. As Comcast noted in its comments, the 1992 Cable Act has imposed an entirely new set of obligations on cable operators, ranging from customer service to leased access to uniform pricing. Comments of Comcast at 16 n.18. Compliance with these obligations is costly, and must be undertaken at the same time the Commission has rolled back cable rates significantly. Adding a productivity offset would only add to the significant financial burdens created by the new regulations. For this reason, it is particularly inappropriate to impose a productivity adjustment at the beginning of rate regulation, before all of the actual costs of the new regulatory regime are evident. *See* Comments of TCI at 51.

Finally, a productivity offset is likely to sabotage the continuing expansion and improvement in the quality of cable service. As Continental points out, a productivity offset could rob cable operators of the funds necessary to improve the nation's video services infrastructure.[9/] This would be contrary to the Congressional expectation that cable operators would continue to expand their services when doing so is justified. *See* 1992 Cable Act, Section 1. A productivity offset also could have the unintended consequence of discouraging investments in high quality programming. A cable operator faced with the

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9/ Comments of Continental at 53. This is particularly true in light of the current rules that effectively prohibit rate increases to pay for upgrades until the all of the construction is completed. *See id.* at 60. A productivity adjustment would further reduce the funds that a cable operator would have available prior to completing the upgrade, making it that much harder to obtain financing.

revenue losses caused by a productivity adjustment would be likely to try to find cheaper, lower quality programming, much as a shopper who is short on cash may be forced to buy the least expensive generic products without regard to the quality of what is being purchased. *See* Comments of Discovery Communications at 9; Comments of Liberty at 23-24. Thus, adoption of a productivity offset would have the perverse effect of depriving consumers of improved cable service and of the quality programming they want.

### B. Adoption of a Uniform System of Accounts for Cable Is Unnecessary and Unreasonably Burdensome.

The Commission also should decline to adopt a uniform system of accounts for cable operators. Doing so would be unreasonably burdensome and is not necessary in the cable context. The fundamental problem with the adoption of a uniform system of accounts is that it creates burdens for all cable operators without concomitant benefits. While in theory a cable operator need not adopt the uniform system of accounts unless it intends to make a cost of service showing, in practice a cable operator cannot know whether such a showing will be necessary in the future. As a consequence, most, if not all, cable operators will be required to conform their books to the uniform system of accounts to prepare for the contingency that a cost of service showing will be needed. *See* Comments of Continental at 64. Moreover, because the Commission's rules now effectively require a regular cost of service showing even to account for the costs of an upgrade, few cable operators could choose to forego the process of converting their books to the uniform system of accounts.

Meanwhile, a uniform system of accounts reproduces common carrier regulation in its most intrusive form — forcing cable operators to conform their business accounting to a regulatory model designed specifically for common carriers. In fact, some items that have been included in the proposed cable accounts not only are directly taken from telephone accounts, but actually have no counterpart in normal cable accounting. Comments of TCI at 22. In other words, the proposed uniform system of accounts would force cable operators to conform their accounting to existing telephone accounting principles. This is directly contrary to the injunction that cable rate regulation shall not duplicate common carrier regulation. 47 U.S.C. § 541(c). It also is quite burdensome, because most cable operators keep their books much differently than the proposed uniform system of accounts would require. Comments of NCTA at 53.

There also are very few benefits to a uniform system of accounts. The Commission already has provided for uniformity through the requirement to use a Form 1220 for any cost of service showing and through its cost allocation rules. The overlay of a uniform system of accounts will not increase the accuracy of either Form 1220 filings or the cost allocation process. In addition, cable operators already bear the burden of justifying their costs and cost allocations in any cost of service showing, so the Commission and other regulators need not fear that they will be "forced" to accept non-standard showings that are not easily understood. Thus, the value of a uniform system of accounts for cable is limited at best.[10/]

Whatever benefits a uniform system of accounts may hold, it is likely that they will be short-lived. As several commenters pointed out, once a cable system is subject to effective competition, there will be no need for it maintain any regulatory books because it no longer will be subject to rate regulation. *See* Comments of Continental at 65. Effective competition is coming very soon for many systems, especially as DBS service comes to market and telephone company video dialtone plans advance. It would be pointless to adopt rules that force those systems to reconfigure their accounts only to have those same systems drop out of the rate regulation system a few years later. *Id.* This is especially true because the Commission would have to spend a significant amount of time modifying any uniform system of accounts it adopts to conform it more accurately to the marketplace realities of cable service, which would require cable operators to modify their accounting repeatedly to conform to changes in the Commission's accounting rules. *See* Comments of Time Warner at 21. Rather than devoting its resources to the constant tinkering that would be required to develop a true cable uniform system of accounts, the Commission could employ those resources much more effectively in other areas.

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10/ Once again, Bell Atlantic is the outlier on this issue, arguing not only that all cable companies should be required to conform to a uniform system of accounts, but that larger cable operators should have the more elaborate Class A accounts applied to them. Comments of Bell Atlantic at 11-12. As Bell Atlantic is well aware from its abortive merger with TCI, there are no cable companies that approach the size of the largest telephone companies, so there is no reason to apply the Class A accounts to any part of the uniformly smaller cable industry.

### C. Telephone-Style Affiliate Transaction Rules Are Inappropriate for the Cable Industry.

One proposed rule that drew almost no support was to impose telephone-style affiliate transaction rules on cable companies. As a host of commenters pointed out, this is a solution in search of a problem. There is no evidence that the use of prevailing company price, the current standard, is in any way abusive or has any harmful effects on consumers. Equally important, the reasons for the telephone company affiliate transaction rules do not apply to cable companies. Given the enormous complications that would result from adoption of telephone-style rules, the Commission should continue to permit the use of prevailing company price in affiliate transactions.

Telephone company affiliate transactions have been subject to Commission scrutiny, especially over the past ten years, because there is considerable potential for abuse in those transactions. For example, the Commission and others discovered that NYNEX had greatly inflated costs in intracompany transactions between its telephone operating companies and NYNEX Materiel Enterprises Corporation. These revelations led to significant overcharges, which eventually were remedied through payments by NYNEX to the U.S. Treasury and substantial adjustments to NYNEX's interstate accounts. *See New York Tel. Co. and New England Tel. Co.*, Order, 5 FCC Rcd 5892 (1990).

Abuses like the NYNEX case occur because telephone company affiliates often are involved in sole source/sole customer relationships. At NYNEX, the Materiel Enterprises Corporation was the only source for the operating companies to purchase their supplies and the operating companies were, effectively, the only customer. There were no market forces in this situation to prevent abusive pricing and, as a consequence, there was a significant incentive for the unregulated Materiel Enterprises Corporation to overcharge the regulated operating company affiliates.

That situation simply does not appear in the cable industry. First, programmers have significant incentives to sell their programming to as many customers as possible. That, after all, is how they become successful: the more cable systems that carry a channel, the more revenues the programmer gets from fees from cable operators and from sales of advertising. *See* Comments of TBS at 11. No cable programmer can be successful, especially at the national level, by selling only to its affiliates. Programmers affiliated with cable operators typically also are under joint ownership. This reduces the incentive of any one cable operator to enter into an abusive transaction with the programmer because it would have to share any benefits of such a transaction with its co-owners. *See* Comments of Liberty at 13. Finally, any incentives to engage in overcharging are greatly diminished by the uniform pricing requirements for the sale of programming and the program access requirements adopted in the 1992 Cable Act.[11/]

As a result of these incentives, there is no history of abusive pricing by programmers affiliated with cable operators. *See, e.g.*, Comments of NCTA at 60; Comments of Discovery at 5 n.6. It is likely, moreover, that the reason there are no known

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11/ *See* Comments of TCI at 47-48. GTE suggests that these rules actually support adoption of affilate transaction rules, but there is no reason to believe that the programming access and pricing rules will not be sufficient in and of themselves. Comments of GTE at 11-12.

cases of manipulative or abusive pricing is that those practices simply do not occur. As NCTA notes, the nature of the industry is such that those practices are easily detected, and it is likely that abusive pricing would come to light in a cost of service showing. *See* Comments of NCTA at 60.

In addition, the myriad costs that would result from adoption of telephone-style rules would far outweigh any benefits. For instance, programmers would lose revenues, both from affiliated cable companies required to pay only "cost" and from unaffiliated companies that would use the uniform programming pricing rules to force the programmers to charge them prices no higher than those charged to affiliates. *See* Comments of Rainbow at 5. Programmers also would be forced to reallocate their costs, often in ways contrary to current accounting, to calculate the rates that affiliated cable operators could be charged, even though the programmers themselves are supposed to be unregulated. *See* Comments of Liberty at 17. The net result would be enormous disincentives to cable operator investment in programmers and reduced diversity and quality in the programming available to cable consumers nationwide.

In the absence of any evidence of a need for telephone-style affiliate transaction rules and in light of the potential costs of adopting those rules, there is no reason to change the current policy. Even a telephone company commenting on this issue, BellSouth, agrees. Comments of BellSouth at 4. Consequently, the Commission should retain the prevailing company price standard for affiliate transactions.

## IV. Conclusion

For all of these reasons, Comcast Cable Communications, Inc. respectfully requests the Commission to adopt rules in accordance with these comments.

Respectfully submitted,

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August 1, 1994

## CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 1st day of August, 1994, I have had hand delivered the foregoing "REPLY COMMENTS" to the following:

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